IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 4550 of 2007()

CRA.186/2000 of ADDL. SESSIONS COURT (ADHOC), TRIVANDRUM
CC.119/1997 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, ATTINGAL

REVN. PETITIONER: PETITIONERS/APPELLANTS/ACCUSED

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1. SHAMNAD, S/O.ABDUL VAHID,
RAFI MANZIL, CHANTHAKUNNU, ANAKUDI MURI,
PAMNGODE VILLAGE.

2. NIZAMUDEEN, PANAYIL VEEDU,
MANACODE, ANAKUDI MURI, PANGODE VILLAGE.

3. ANSARI, S/O.KAMARUDEEN,
LAKSHAMVEEDU COLONY, NALUCENTU,
CHANTHAKUNNU, PANGODE VILLAGE.

BY ADV. SRI.LATHEESH SEBASTIAN

RESPONDENTS: STATE

STATE OF KERALA, REPRESENTED BY
THE DIRECTOR OF PUBLIC PROSECUTIONS,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 19/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. NO.4550 of 2007

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Dated, this the day of 2006

ORDER

Petitioners who are accused Nos. 1 to 3 in C.C. No. 119 of 1997 on the file of the J.F.C.M. I, Attingal for an offence punishable under Sec. 323 read with Sec. 34 I.P.C. challenge the conviction entered and the sentence passed concurrently by the courts below for the said offence.

2. The case of the prosecution can be summarised as follows:-

On 15-11-1996 near the Panchayat Office, Pangode the accused in furtherance of their common intention to voluntarily cause hurt to P.W.3 fisted him with bare hands and have thereby committed the aforesaid offence.

3. On the side of the prosecution, six witnesses were examined as P.Ws 1 to 6 and 7 documents were marked as Exts.P1 to P7. After the close of the prosecution evidence, the accused were questioned under Sec. 313 (1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against them in the evidence for the prosecution. The accused denied the incriminating

circumstances appearing against them in the evidence for the prosecution and maintained their innocence. They did not adduce any defence evidence when called upon to do so.

5. The learned Magistrate, after trial, as per judgment dated 5-4-2000 found the revision petitioners guilty of the offence punishable under Section 323 I.P.C and sentenced each of them to undergo rigorous imprisonment for one year and to pay fine of Rs. 500/- each and on default to pay the fine to undergo simple imprisonment for three months. The conviction and sentence were confirmed in an appeal preferred by the revision petitioners as Crl. Appeal 186 of 2000 before the learned District and Sessions Judge (Fast Track Court-I), Thiruvananthapuram. Hence, this Revision.

6. Eventhough the learned counsel appearing for the revision petitioners assailed on various grounds, the conviction entered against them, in as much as the courts below have recorded the conviction after a careful evaluation of the oral and documentary evidence in the case, this court will be loathe to interfere with the said conviction, which is accordingly confirmed.

7. What now survives for consideration is the adequacy or otherwise of the sentence imposed on the revision petitioners. Having regard to the facts and circumstances of the case, I do not think that

the revision petitioners deserve penal servitude by way of incarceration. For the said conviction, I am of the view that a direction to undergo imprisonment till rising of the court and to pay an appropriate compensation shall meet the ends of justice. Accordingly, the sentence imposed on the revision petitioners is set aside instead each of them is directed to undergo imprisonment till the rising of the court and to pay compensation of Rs. 3000/- each to P.W.3, the injured. The compensation shall be deposited before the trial court within one month from today failing which the defaulting accused shall undergo simple imprisonment for one month by way of default sentence.

This revision is disposed of confirming the conviction entered but modifying the sentence as above.

V. RAMKUMAR,
(JUDGE)

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